Richard C. Terry, USB No. 3216 TERRY JESSOP & BITNER 341 South Main, Suite 500 Salt Lake City, Utah 84111 Telephone: 801/534-0909

Fax: 801/534-1948

Email: richard@tjblawyers.com

Attorneys for APG Financial

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF UTAH CENTRAL DIVISION

In re:

Dennis Lee Brewer, Sr. and Cheryl Lynn Brewer,

Debtors.

Bankruptcy No. 12-23206 jtm

Chapter 13

Filed Electronically

MOTION TO COMPEL ASSUMPTION
OR REJECTION OF LEASE, MOTION
FOR ALLOWANCE OF
ADMINISTRATIVE CLAIM FOR INTERIM
PAYMENTS AND MOTION FOR RELIEF
FROM THE AUTOMATIC STAY

APG Financial by and through the undersigned counsel of TERRY JESSOP & BITNER, and pursuant to 11 U.S.C. §§ 365 and 362, hereby moves the above-entitled court for an order requiring the debtor to assume or reject the lease hereinafter described, for an order allowing an administrative claim and requiring the debtor to make interim payments, or granting relief from the automatic stay if the debtor is unable to make interim payments, or rejects the lease. In support hereof, this creditor states as follows:

- 1. On or about October 16, 2010, (debtor) entered into a Motor Vehicle Lease Agreement with APG pertaining to a 2000 Dodge Dakota, VIN#1B7HG2AZOYS769587 ("lease"). Copies of the lease and title are attached hereto as Exhibits "A" and "B" and are incorporated herein by reference. The general terms of the lease are set forth in the exhibits.
- 2. Debtor is in default to APG Financial for failure to make regular payments under the lease when due. The lease is delinquent in the amount of \$10,135.60.
- In addition, attorneys fees have been incurred and continue to accrue since
 APG Financial employed TERRY JESSOP & BITNER to represent it.
- 4. On or about March 16, 2012, debtor filed a voluntary petition for relief under Chapter 13 of the United State Bankruptcy Code.
- 5. Since the filing of debtor's petition, the leased vehicle has decreased in value and continues to decrease in value.
- 6. The fair rental value of the leased vehicle is equal to the bi-weekly lease payments under the lease of \$160.00 or \$320.00 monthly.
- 7. APG Financial is the owner and lien holder of the 2000 Dodge Dakota, VIN#1B7HG2AZOYS769587 leased to the debtor.
- 8. Pursuant to 11 U.S.C. § 365(d)(10) and additionally by reason of the decrease in value of the leased vehicle, APG Financial is entitled to rental payments for the debtor's use and possession of the vehicle or relief from the automatic stay in the event

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the debtor cannot make regular lease payments or pay the value of the use and possession of the leased vehicle.

- 9. To the extent debtor rejects the lease or fails to make interim payments, APG Financial is entitled to an administrative claim equal to rental payments from the date of filing until surrender or confirmation.
- 10. Since confirmation 55 payments of \$160.00 have accrued but not been paid totaling \$8,800.00.
- Debtor is using or has used the vehicle, but failed to provide APG Financial with adequate protection for the use and depreciation. With the accrual of interest and depreciation, APG Financial's interest cannot be adequately protected without cash payments.
- 12 Debtor's leasehold interest pertaining to the 2000 Dodge Dakota, VIN#1B7HG2AZOYS769587 is not necessary for the debtor's effective reorganization.
- 13. If the debtor is permitted to continue to use this vehicle or the automatic stay allowed to continue in effect, APG Financial will sustain irreparable harm in that the collateral is being used by the debtor without any compensation for the use and depreciation.
- 14. This creditor alleges that it is entitled to relief for cause from the automatic stay pursuant to 11 U.S.C. § 362 for the reasons contained in this motion to prevent irreparable harm and loss or damage to this creditor's property.

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- 15. With the automatic stay in effect, APG Financial is being irreparably harmed in that the collateral is being used by the debtor without any compensation for the use and depreciation, and without the collateral being insured against loss, damage or destruction. Since APG Financial is being irreparably harmed any order should be effective immediately upon its entry.
- This creditor is further entitled to relief from the automatic stay by virtue of the fact that the debtor does not own the property and the lease is not necessary for an effective reorganization.

WHEREFORE, APG Financial prays for the following relief:

- 1. That the Court enter an order pursuant to 11 U.S.C. § 365(d), compelling the debtor to assume the lease or fixing a time within which the debtor is required to assume or reject the lease which period should not be more than fourteen days.
- 2. That debtor be ordered to pay this creditor the regular monthly payments as the reasonable value for the use and possession of the 2000 Dodge Dakota, VIN#1B7HG2AZOYS769587 from the date of the filing of this bankruptcy until the lease is either assumed or rejected pursuant to 11 U.S.C. § 365. That APG Financial be awarded an administrative expense claim for any unpaid payments from the date of filing until surrender or confirmation.
- 3. That should debtor be unable to pay for debtor's use and possession of the 2000 Dodge Dakota, VIN#1B7HG2AZOYS769587 by making the regular lease payments as required by the lease, that the automatic stay of 11 U.S.C. § 362(a), be terminated

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pursuant to 11 U.S.C. § 362(d)(1) and the debtor be ordered to immediately surrender possession of the 2000 Dodge Dakota, VIN#1B7HG2AZOYS769587 to this creditor.

- 4. That if the 2000 Dodge Dakota, VIN#1B7HG2AZOYS769587 is not insured pursuant to the terms of the lease, the automatic stay be vacated pursuant to 11 U.S.C. § 362(d)(1) and the debtor ordered to immediately surrender possession of the 2000 Dodge Dakota, VIN#1B7HG2AZOYS769587 to APG Financial.
- 5. That in the event debtor assumes the lease, the debtor be ordered to fully comply with 11 U.S.C. § 365(b), including full payment of any and all arrearages, property taxes, interest, costs and attorney fees.
- 6. That in the event debtor rejects the lease or fails to assume or reject the lease within the time set by the court, the automatic stay be terminated and debtor be directed to surrender possession of the 2000 Dodge Dakota, VIN#1B7HG2AZOYS769587 to this creditor.
- 7. That any order entered pursuant to this motion be effective immediately upon its entry.
- 8. That APG Financial be awarded reasonable attorney fees and costs incurred herein pursuant to the terms and provisions of the lease.
- 9. That APG Financial have such further relief as the Court deems just and equitable.

DATED September 26, 2014.

TERRY JESSOP & BITNER Attorneys for APG Financial Bank, N.A.

By: /s/ Richard C. Terry

CERTIFICATE OF SERVICE

I, Richard C. Terry, attorney for APG Financial Bank, hereby certify that on September 26, 2014, I served a copy of the foregoing Motion to Compel Assumption or Rejection of Lease, Motion for Allowance of Administrative Claim for Interim Payments and Motion for Relief from the Automatic Stay upon the following by first class mail, postage prepaid; or by filing this pleading electronically as an ECF registered attorney of the United States District Court, I caused the same to be served via ECF.

Dennis Lee Brewer, Sr. (Via U.S. Mail) and Cheryl Lynn Brewer 1087 North 125 West Clearfield, UT 84015

Theron D. Morrison (Via ECF) 290 25th Street, Suite #102 Ogden, UT 84401

Kevin R. Anderson (Via ECF) Chapter 13 Trustee 405 South Main Street, Suite #600 Salt Lake City, UT 84111

/s/	Richard C.	Terry
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Case 12-23206 Doc 26 Filed 09/26/14 Entered 09/26/14 15:16:30 Desc Main

ORIGINAL TITLE



Title Number UT10462816

Vehicle Type TRUCK VIN/HIN1B7HG2AZ0YS769587

Cylinders 8

Year 2000 Make DODG

Fuel GASOLINE

Model QAD DAK 2nd VIN Odometer 0 **Bdy Sty 4 DOOR EXT CAI**

Date Issued 11/04/2010

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APG FINANCIAL 3899 S REDWOOD RD WEST VALLEY UT 84119-4717 B

Owner Information

APG FINANCIAL 3899 S REDWOOD RD WEST VALLEY CITY UT 84119-4717

Lienholder Information

APG FINANCIAL

WEST VALLEY UT 84119-4717

VEHICLE IS EXEMPT FROM ODOMETER REQUIREMENTS

Request For Lien Change

Complete this section. Send the title and required fee to the Division of Motor Vehicles. Please check one box.

Issue a title free of liens

Issue a title showing the following as the NEW LIEN HOLDER

LIEN RELEASE - Signature of Lien Holder (releasing interest)

Vehicle owner's signature requesting lien change

X

Title of signer

New lien holder's name

Date

Address

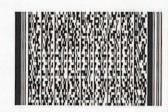
City

State ZIP Code

Division of Motor Vehicles UTAH STATE TAX COMMISSION 210 North 1950 West Salt Lake City, Utah 84134



TC-127 Rev. 01/09 CDR



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